

May 13, 2005

Hon. Colleen McMahon  
United States District Judge  
Southern District of New York  
U.S. Courthouse  
300 Quarropas Street  
White Plains, New York 10601

Via ECF and U.S. Mail

Re: USA v. Michael O'Donnell  
Docket No. 02-CR-411 (CM)

Your Honor:

By appointment of the Court of Appeals for the Second Circuit I represented the defendant on his appeal of the judgment in the above-referenced matter, and write in response to your Honor's Order, dated April 29, 2005, regarding Mr. O'Donnell's sentence following the issuance of the Mandate by the Court of Appeals. After discussion of the options with Mr. O'Donnell, re-sentencing would not be appropriate in this case. The mandatory nature of the Sentencing Guidelines, in place when the sentence was imposed, did not appear to materially affect the obstruction enhancement, and United States v. Booker, — U.S. — 125 S.Ct 738 (2005), does not alter that calculus. In sum, it is unnecessary to re-sentence Mr. O'Donnell, since, for all that appears, the sentence would not have been different if Booker was in place when sentence was pronounced.

Respectfully submitted,

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cc: Stanley Okula, Esq.  
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